HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on: October 04, 2007
Judgment delivered on: December 12, 2007

W.P. (C) No. 8435/2003

Ex. Const. Suresh Kumar (Dvr) ...Petitioner
! Through: Mr. Arun Bhardwaj, Advocate

versus

$ Commissioner of Police & Ors. ...Respondents
^ Through: Mr. Rattan Lal, Advocate

***CORAM:**

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

VIPIN SANGHI, J.
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1. The Petitioner was a Constable (Driver) with the Respondent Delhi Police. On 21.10.1998 while he was detained for reserved duty in Security/MT lines he did not turn up to attend to his duties. He was marked absent and remained absent for 150 days, 11 hours and 30 minutes, unauthorizedly. He was issued an absentee notice on 23.2.1999 and he reported for duty only on 20th March 1999. The Petitioner was issued summary of allegations in respect of the said

absence. It was further alleged that there were 12 cases in the past when he had remained unauthorizedly absent for which he was awarded PDs and censured on some occasions while on other occasions his absence was treated as leave without pay. It was further alleged that he was a habitual absentee and incorrigible type of person. An inquiry officer was appointed. It appears that the Petitioner did not cooperate and the additional DCP/PCR, i.e. the Disciplinary Authority, passed an order dated 6th November 2002 recording that despite the best efforts of the Inquiring Officer he has not been able to make any progress due to non-cooperation of the Petitioner as he has not joined the inquiry despite repeated notices sent to him. Consequently, the Disciplinary Authority ordered that the departmental inquiry be conducted ex-parte under Rule 18 of the Delhi Police (Punishment and Appeals) Rule, 1980. Despite the aforesaid order, the Inquiry Officer with a view to provide a fair opportunity to the Petitioner time and again sent notices to the Petitioner calling him to join the proceedings. However, the Petitioner failed to join the proceedings. The prosecution witnesses were produced, who produced the relevant record to substantiate the charge about the various acts of absentism and the past conduct of the Petitioner. The Inquiring Officer vide his report dated 25.2.2000 concluded the charge to have been proved beyond any reasonable shadow of doubt and the Disciplinary Authority after giving an opportunity to the Petitioner to represent against the findings of the Inquiring Officer, to which there

was no response, passed an order of penalty thereby dismissing the Petitioner from service. The Departmental Appeal filed by the Petitioner was also dismissed vide order dated 7th February 2001. Thereafter, the Petitioner approached the Central Administrative Tribunal, Principal Bench, New Delhi (The Tribunal) by filing O.A. No. 3157/2002 challenging the aforesaid order of the Appellate Authority. The Tribunal, after considering the various grounds taken by the Petitioner before it, has dismissed the OA filed by the Petitioner and the said order is now impugned before us.

2. The first submission of the Petitioner is that the Disciplinary inquiry had been ordered against the Petitioner and the order of penalty was passed by the Additional DCP who was not empowered to punish the Petitioner in disciplinary matters. We find that the said ground was not taken by the Petitioner either before the Disciplinary Authority, or the Appellate Authority and not even before the Tribunal. Consequently, the Respondents have had no occasion to deal with the said ground. Since we are sitting in judicial review of the order passed by the Tribunal, the said order has to be tested primarily on the strength of the averments made and submissions advanced before the Tribunal. We cannot permit the Petitioner to raise such submissions at this stage and therefore reject the same.

3. It is further contended that the said authorities while passing the order of dismissal have relied upon and have been

influenced by the fact that the Petitioner had again absented from 13.11.1999 onwards. This argument was advanced by the Petitioner before the Tribunal as well and the observation of the Tribunal in this regard reads as follows:

> "Another limb of the argument was that the subsequent conduct of the applicant had been considered which would vitiate the action taken against him. Our attention has been drawn towards the report of the inquiry officer who indeed had taken the subsequent conduct into the consideration. But the perusal of the impugned order reveals that the disciplinary authority and the appellate authority had not taken into consideration the subsequent conduct. Once the concerned authorities had not taken into consideration the subsequent conduct of the applicant, this particular argument so much though of loses its significance and thrust."

4. We have also, on our own gone through the final order passed by the Disciplinary Authority as well as the order passed by the Appellate Authority and find that the punishment inflicted upon the Petitioner is only in respect of the charge made against him which was duly proved in the course of departmental Inquiry. The relevant extract from the order of penalty passed by the Disciplinary Authority reads as follows:

> "I have carefully gone through the DE file, finding of the EO and other material available on record. The E.O. Has proved the charge of willful and unauthorized absence. There is no reason to differ with the E.O. about his findings. The previous record of absence of the defaulter Ct. (Driver) is also not good and it also goes against him. There is history of absenting

> unauthorizedly and willfully during his entire service career on as many as on 12 occasions prior to ordering the present departmental enquiry. This shows that he is habitual absentee and he did not mend his ways despite being given ample opportunities. The punishment awarded to him in the past has not impact which proves that he is an incorrigible lot. He was given ample opportunity to defend his case but he neither submitted his representation nor attended the O.R. This shows that he does not want to say anything in his defence. Such kind of frequent absentism can not be tolerated in the disciplined force. Keeping in view over all facts, it is clear that Ct. (Dvr) is not fit to be retained in the disciplined force. Therefore, I.P. Dass, Addl. DCP/PCR, Delhi hereby order to dismiss Ct.(Dvr.) Suresh Kumar, No.4423/PCR from the force with immediate effect. His above mentioned willful and unauthorized absence period is decided as 'Dies-non' on the principle of 'NO WORK NO PAY'."

5. Similarly there is nothing in the appellate order to suggest that the resumed absent of the Petitioner from 13.11.1999 has been taken into account while punishing the Petitioner.

6. The next submission of the Petitioner was that the medical certificates produced by the Petitioner were not taken into consideration by the concerned authorities. The Tribunal has held, and in our view rightly so, that the same is of no relevance since the charge against the Petitioner was about his absence from duty without any intimation and unauthorizedly. Admittedly,the Petitioner's leave had not been sanctioned. Moreover, the Petitioner himself had not participated in the inquiry proceedings despite repeated opportunities

and requests to set up his defense or substantiate the same. In view of the aforesaid, we find no merit in the submission of the Petitioner.

7. It was lastly contended that Rule 16 of the Delhi Police (Punishment and Appeals) Rule, 1980 is ultra virus, inasmuch as, the said rule provides for the preparation of list of witnesses by the Inquiring Officer. The Tribunal rejected the said argument by placing reliance in its earlier decisions in S.I. Rajesh Aggarwal vs. Commissioner of Police and others, O.A. No. 3414/2001 decided on 4.12.2002 and Om Pal Singh vs. Union of India and others, O.A. No. 2098/2001 decided on 5.2.2002. In ***Om Pal Singh vs. Union of India***, 2006 (4) AD (Del) 461, this court has already considered validity of Rule 16 of the Delhi Police (Punishment and Appeals) Rule, 1980 and has negated the challenge to the said rule, inter-alia, on the aforesaid ground taken by the Petitioner.

8. In view of the aforesaid we find no merit in the Petition and dismiss the same leaving the parties to bear their own costs.

VIPIN SANGHI
JUDGE

A.K. SIKRI
JUDGE

December 12, 2007
P.K. BABBAR